



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (the “*Act*”), and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on unpaid rent and a Monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding form which declares that on September 16, 2020, the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received five days after service.

Based on the written submissions of the landlord, and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the Direct Request Proceeding documents on September 21, 2020, the fifth day after their registered mailing.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

On the landlord's Application for Dispute Resolution by Direct Request, the landlord seeks an Order of Possession based on unpaid rent and a Monetary Order for unpaid rent in the amount of \$500.00.

The landlord asserts that she served a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated September 02, 2020, to the tenant on September 02, 2020 by posting the Notice to the door of the rental unit.

The landlord provided an incomplete copy of the Proof of Service of the Notice form, as only the first page of the form was provided. The form does not include the name and signature of the person who served the Notice and does not include the name and signature of a witness who may have witnessed service of the Notice in the manner proclaimed by the applicant landlord.

Analysis

Direct Request proceedings are *ex parte* proceedings. In an *ex parte* proceeding, the opposing party is not invited to participate in the hearing or make any submissions. As there is no ability for the tenants to participate, there is a much higher burden placed on landlords in these types of proceedings than in a participatory hearing. This higher burden protects the procedural rights of the excluded party and ensures that the natural justice requirements of the Residential Tenancy Branch are satisfied.

In this type of matter, the landlord must prove they served the tenant with the Notice of Direct Request Proceeding, the Notice, and all related documents with respect to the Direct Request process, in accordance with the Act and Policy Guidelines. In an *ex parte* Direct Request Proceeding, the onus is on the landlord to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. If the landlord cannot establish that all

documents meet the standard necessary to proceed via the Direct Request Proceeding, the application may be found to have deficiencies that necessitate a participatory hearing, or, in the alternative, the application may be dismissed.

As part of an application for dispute resolution by Direct Request, a landlord must provide a Proof of Service of the Notice to End Tenancy form to confirm that the Notice to End Tenancy was served in accordance with the Act. On the first page of the Proof of Service of the Notice to End Tenancy form, the landlord has checked a box indicating that the Notice to End Tenancy was served to the tenant by posting a copy of the Notice to the door of the rental unit.

If service of the Notice was completed in this manner, the landlord must provide proof to confirm service of the Notice to End Tenancy, such as the name and signature of a witness to demonstrate that service of the Notice was witnessed. The person serving the Notice must also provide their name and signature on the second page of the Proof of Service of the Notice to End Tenancy form, under the section titled "signature", as doing so permits the person to attest to having served the Notice in accordance with the Act, as detailed in the earlier sections of the Proof of Service of the Notice to End Tenancy form.

However, the landlord has provided an incomplete copy of the Proof of Service of the Notice form, as only the first page of the form was provided.

I find that the Proof of Service of the Notice to End Tenancy form submitted by the landlord depicts that the person who may have served the Notice did not provide a name and signature on the second page of the form in the field where service of the Notice to End Tenancy is to be confirmed, as that page was not provided. The Proof of Service of the Notice to End Tenancy form provided by the landlord does not include a name and signature of the person who served the Notice, which is a requirement of the Direct Request process.

If the Notice was served by posting it to the door of the rental unit, the landlord must provide proof, such as a witness statement, including the name and signature of a witness, to confirm service of the Notice to End Tenancy in this manner.

The form does not include the name or signature of a witness to confirm that the service was carried out as attested by the landlord. Instead, the landlord has provided electronic copies of photographs which the landlord asserts are depictions of the September 02, 2020 Notice to End Tenancy for Unpaid Rent posted to the door of the rental unit.

I find that the photographs provided by the landlord do not sufficiently prove that the Notice to End Tenancy was served in accordance with the Act, as they only demonstrate that a Notice to End Tenancy was attached to a door, but do not provide any proof to sufficiently demonstrate that the door to which the Notice was affixed was the door of the rental unit.

Notwithstanding the landlord's effort to prove service of the Notice to End Tenancy by providing electronic photographs, I find that the landlord is still required to provide a completed Proof of Service of the Notice to End Tenancy form which includes the name and signature of a witness to confirm that the Notice to End Tenancy was served in accordance with the Act.

I find that the landlord has not demonstrated that service of the Notice to End Tenancy was witnessed and completed in accordance with the Act, nor has the landlord provided the name and signature of a witness on the Proof of Service of the Notice to End Tenancy form, as is required within the Direct Request process.

The Proof of Service of the Notice to End Tenancy form provided by the landlord does not satisfy the requirements under the Direct Request Process to prove that the tenant was served with the Notice in accordance with the Act, as required under the provisions of the Direct Request process outlined in Policy Guideline #39. Based on the evidentiary material provided by the landlord, I find that I am not able to confirm service of the Notice to End Tenancy to the tenant, which is a requirement of the Direct Request process.

As previously indicated, in an ex parte Direct Request Proceeding, the onus is on the applicant landlord to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. I find that there are deficiencies with this application, as outlined above, which cannot be clarified by way of the Direct Request Proceeding. These deficiencies cannot be remedied by inferences in the absence of more evidentiary material, or oral testimony, which may clarify the questions raised by these inconsistencies.

Based on the foregoing, I dismiss the landlord's application for an Order of Possession and a monetary Order with leave to reapply.

It remains open to the landlord to reapply for dispute resolution via the Direct Request process if all requirements for an application for dispute resolution via Direct Request, as outlined in Policy Guideline #39, can be met, or, in the alternative, the landlord may

wish to submit an application for dispute resolution to be heard via a participatory hearing.

As the landlord was not successful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I dismiss the landlord's application for an Order of Possession based on unpaid rent with leave to reapply.

I dismiss the landlord's application for a monetary Order with leave to reapply.

I dismiss the landlord's request to recover the \$100.00 filing fee paid for this application without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: September 21, 2020

Residential Tenancy Branch